

REMARKS

Please withdraw claims 45-51 which are process claims, so that they may be rejoined later in prosecution. Please cancel claims 24-44 and 52 as drawn to non-elected inventions, without prejudice or disclaimer. Applicant reserves the right to pursue the subject matter of the canceled claims in this, or a related application.

The Examiner has issued a restriction requirement for election of one of the following inventions:

Group (1) Claims 1-4 and 6-23, drawn to particles comprising iron and one or more radioactive isotopes, classified in class 424, subclass 1.11.

Group (2) Claims 1-4 and 6-23, drawn to particles comprising gadolinium and one or more radioactive isotopes, classified in class 424, subclass 1.11.

Group (3) Claims 1-3 and 5-23, drawn to particles comprising calcium and one or more radioactive isotopes, classified in class 424, subclass 1.11.

Group (4) Claims 1-3 and 6-23, drawn to particles comprising a metal and one or more radioactive isotopes wherein the metal is not iron, gadolinium, or calcium as in Groups (1) – (3) above, classified in class 424, subclass 1.11.

Group (5) Claims 24-27, 30-35, and 37-44, drawn to a method of locoregional treatment of abnormal tissue wherein particles comprising iron and one or more radioactive isotopes are utilized, classified in class 424, subclass 9.1.

Group (6) Claims 24-26, 28-35, and 37-44, drawn to a method of locoregional treatment of abnormal tissue wherein particles comprising gadolinium and one or more radioactive isotopes are utilized, classified in class 424, subclass 9.1.

Group (7) Claims 24-26 and 30-44, drawn to a method of locoregional treatment of abnormal tissue wherein particles comprising calcium and one or more radioactive isotopes are utilized, classified in class 424, subclass 9.1.

Group (8) Claims 24-26, 30-35, and 37-44, drawn to a method of locoregional treatment of abnormal tissue wherein particles comprising a metal and one or more radioactive isotopes wherein the metal is not iron, gadolinium, or calcium as in Groups (5) – (7) above are utilized, classified in class 424, subclass 9.1.

Group (9) Claims 45-47, drawn to a method of making particles comprising iron and one or more radioactive isotopes as set forth in independent claim 45, classified in class 424, subclass 1.11.

Group (10) Claims 45-47, drawn to a method of making particles comprising gadolinium and one or more radioactive isotopes as set forth in independent claim 45, classified in class 424, subclass 1.11.

Group (11) Claims 45-47, drawn to a method of making particles comprising calcium and one or more radioactive isotopes as set forth in independent claim 45, classified in class 424, subclass 1.11.

Group (12) Claims 45-47, drawn to a method of making particles comprising a metal and one or more radioactive isotopes wherein the metal is not iron, gadolinium, or calcium as in Groups (9) – (11) above, and the process as is set forth in independent claim 45, classified in class 424, subclass 1.11.

Group (13) Claims 48-51, drawn to a method of making particles comprising iron and one or more radioactive isotopes as set forth in independent claim 48, classified in class 424, subclass 1.11.

Group (14) Claims 48-51, drawn to a method of making particles comprising gadolinium and one or more radioactive isotopes as set forth in independent claim 48, classified in class 424, subclass 1.11.

Group (15) Claims 48-51, drawn to a method of making particles comprising calcium and one or more radioactive isotopes as set forth in independent claim 48, classified in class 424, subclass 1.11.

Group (16) Claims 48-51, drawn to a method of making particles comprising a metal and one or more radioactive isotopes wherein the metal is not iron, gadolinium, or calcium as in

Groups (13) – (15) above, and the process as is set forth in independent claim 48, classified in class 424, subclass 1.11.

Group (17) Claim 52, drawn to a method of acupuncture using particles comprising iron and one or more radioactive, classified in class 424, subclass 1.11.

Group (18) Claim 52, drawn to a method of acupuncture using particles comprising gadolinium and one or more radioactive, classified in class 424, subclass 1.11.

Group (19) Claim 52, drawn to a method of acupuncture using particles comprising calcium and one or more radioactive, classified in class 424, subclass 1.11.

Group (20) Claim 52, drawn to a method of acupuncture using particles comprising a metal and one or more radioactive isotopes wherein the metal is not iron, gadolinium, or calcium as in Groups (13) – (15) above, classified in class 424, subclass 1.11.

In response Applicant elects Group I, claims 1-4 and 6-23, drawn to particles comprising iron and one or more radioactive isotopes. In light of this election, the inventorship on this application has changed to include Dr. Franklin Wong as the sole inventor. Accordingly, Applicant files herewith an amendment under 37 C.F.R. § 1.48(b) to change inventorship. Applicant has withdrawn claims 45-51, which are process claims that include all limitations of the radiopharmaceutical macroaggregate composition of claim 1. Applicant is withdrawing these claims so that if claim 1 is subsequently found allowable, Applicant will have the right to rejoin claims 45-51 in accordance with the provisions of MPEP § 821.04. Finally, Applicant has canceled claims 24-44 and 52 because they are drawn to non-elected inventions.

Applicant respectfully asserts that claim 1 is a linking claim. As set forth in MPEP § 809.03: “There are a number of situations which arise in which an application has claims to two or more properly divisible inventions, so that a requirement to restrict the application to one would be proper, but presented in the same case are one or more claims (generally called “linking” claims) inseparable therefrom and thus linking together the inventions otherwise divisible.” Linking claims “must be

examined with the invention elected, and should any linking claim be allowed, the restriction requirement must be withdrawn.” MPEP § 809. Therefore, linking claims, if allowable, “act to prevent restriction between inventions that can otherwise be shown to be divisible.” MPEP § 809.03.

When the requirement for restriction is predicated upon the nonallowability of linking claims, “applicant is entitled to retain in the case claims to the nonelected invention or inventions.” MPEP § 809.04. As already indicated above, Applicant elects, without traverse, to prosecute the claims of Group (1), claims 1-4 and claims 6-23, drawn to particles comprising iron and one or more radioactive isotopes. If linking claim 1 is allowed, the Examiner “must examine the claims to the nonelected inventions that are linked to the elected invention by such allowed linking claims” (*Id.*), in this case the claims and species in Groups (2), (3), and (4). Therefore, Applicant is not canceling the non-elected claims in Groups (2), (3), and (4) at this time, nor is Applicant amending the claims to exclude the non-elected metal in Groups (2), (3), and (4).

In response to the Examiner’s requirement for election of a particular species for examination, Applicant elects, without traverse, the following species in the corresponding claims for search purposes: “Yttrium-90 (⁹⁰Y)” (claim 6); “particulates” (claim 7); “glass” (claim 8); and “cation” (claim 12). These elections are made without prejudice or disclaimer. Based on these elections, it is Applicant’s belief that the following claims read on the elected invention and species: claims 1-2, 4, 6-8, 10-12, 14-15, and 18-23. Applicant has not canceled any claims in Group I, since “[u]pon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species...” MPEP §809.02(a).

CONCLUSION

It is Applicant's belief that the claims are in condition for allowance. Such favorable action is respectfully requested. If the Examiner has any questions or comments regarding any issue associated with this application a telephone call to the undersigned representative at 512/542-8569 is welcome.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Margaret J. Sampson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Margaret J. Sampson
Reg. No. 47,052
Attorney for Applicants

VINSON & ELKINS L.L.P.
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002-6760
512/542-8569

Date: September 22, 2005
628576_1.DOC